

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DANA DOAK,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:16-cv-03039-SAB

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT**

INTRODUCTION

Before the Court are Plaintiff Dana Doak’s Motion for Summary Judgment, ECF No. 17, and Defendant Commissioner of the Social Security Administration’s Motion for Summary Judgment, ECF No. 21. The Court also reviewed Plaintiff’s reply, ECF No. 22. Plaintiff is represented by D. James Tree, and Defendant is represented by Special Assistant United States Attorney Richard Rodriguez. The motions were heard without oral argument. For the reasons set forth below, the Court **grants** Defendant’s motion, **denies** Plaintiff’s motion, and **affirms** the administrative law judge (“ALJ”).

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ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY . . . ^ 1

JURISDICTION & POSTURE

On February 2, 2012, Plaintiff filed a Title XVI application for Social Security Insurance benefits and a Title II application for Disability Insurance Benefits. Plaintiff alleges an onset date of May 26, 2011 for various ailments discussed in detail below.

Plaintiff's application was denied initially and on reconsideration. On March 20, 2013, Plaintiff appeared and testified at a hearing held before an ALJ. The ALJ issued a decision on May 3, 2013, finding that Plaintiff was not disabled. Plaintiff timely requested review by the Appeals Council, which denied the request. The Appeals Council's denial of review made the ALJ's decision the final decision of the Commissioner. Plaintiff sought review before this Court, which remanded the decision on December 3, 2014 for further administrative proceedings.

A new ALJ held a second administrative hearing on November 16, 2015, where a new vocational expert testified. In a second decision, the ALJ found Plaintiff could perform work existing in significant numbers in the national economy, and concluded Plaintiff is not disabled.

Plaintiff filed a timely appeal with the United States District Court for the Eastern District of Washington on March 23, 2016. The matter is before this Court under 42 U.S.C. § 405(g).

SEQUENTIAL EVALUATION PROCESS

The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months."

1 42 U.S.C. § 423(d)(1)(A). A claimant shall be determined to be under a disability
2 only if his impairments are of such severity that the claimant is not only unable to
3 do his previous work, but cannot, considering claimant's age, education and work
4 experiences, engage in any other substantial gainful work which exists in the
5 national economy. 42 U.S.C. § 423(d)(2)(A). The Commissioner has established a
6 five-step sequential evaluation process for determining whether a person is
7 disabled. 20 C.F.R. § 404.1520(a)(4); *Bowen v. Yuckert*, 482 U.S. 137, 140-42
8 (1987).

9 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R.
10 § 404.1520(b). Substantial gainful activity is work done for pay and requires
11 compensation above the statutory minimum. 20 C.F.R. § 404.1574; *Keyes v.*
12 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in
13 substantial activity, benefits are denied. 20 C.F.R. § 404.1571. If he is not, the ALJ
14 proceeds to step two.

15 Step 2: Does the claimant have a medically-severe impairment or
16 combination of impairments? 20 C.F.R. § 404.1520(c). If the claimant does not
17 have a severe impairment or combination of impairments, the disability claim is
18 denied. A severe impairment is one that lasted or must be expected to last for at
19 least 12 months and must be proven through objective medical evidence. 20 C.F.R.
20 § 404.1508-09. If the impairment is severe, the evaluation proceeds to the third
21 step.

22 Step 3: Does the claimant's impairment meet or equal one of the listed
23 impairments acknowledged by the Commissioner to be so severe as to preclude
24 substantial gainful activity? 20 C.F.R. § 404.1520(d); 20 C.F.R. § 404 Subpt. P.
25 App. 1. If the impairment meets or equals one of the listed impairments, the
26 claimant is conclusively presumed to be disabled. *Id.* If the impairment is not one
27 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.
28

1 Before considering Step 4, the ALJ must first determine the claimant's
 2 residual functional capacity. 20 C.F.R. § 404.1520(e). An individual's residual
 3 functional capacity is her ability to do physical and mental work activities on a
 4 sustained basis despite limitations from her impairments.

5 Step 4: Does the impairment prevent the claimant from performing work she
 6 has performed in the past? 20 C.F.R. § 404.1520(f). If the claimant is able to
 7 perform her previous work, she is not disabled. *Id.* If the claimant cannot perform
 8 this work, the evaluation proceeds to the fifth and final step.

9 Step 5: Is the claimant able to perform other work in the national economy
 10 in view of her age, education, and work experience? 20 C.F.R. § 404.1520(g).

11 The initial burden of proof rests upon the claimant to establish a prima facie
 12 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098 (9th
 13 Cir. 1999). This burden is met once a claimant establishes that a physical or mental
 14 impairment prevents her from engaging in her previous occupation. *Id.* At step
 15 five, the burden shifts to the Commissioner to show that the claimant can perform
 16 other substantial gainful activity. *Id.*

17 18 STANDARD OF REVIEW

19 The Commissioner's determination will be set aside only when the ALJ's
 20 findings are based on legal error or are not supported by substantial evidence in the
 21 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing
 22 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
 23 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
 24 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975). Substantial
 25 evidence is "such relevant evidence as a reasonable mind might accept as adequate
 26 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the
 27 ALJ's denial of benefits if the evidence is susceptible to more than one rational
 28

1 interpretation, one of which supports the decision of the administrative law judge.
2 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). The Court reviews the
3 entire record. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). “If the evidence
4 can support either outcome, the court may not substitute its judgment for that of the
5 ALJ.” *Matney*, 981 F.2d at 1019.

6 A decision supported by substantial evidence will be set aside if the proper
7 legal standards were not applied in weighing the evidence and making the decision.
8 *Browner v. Sec. of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988). An
9 ALJ is allowed “inconsequential” errors as long as they are immaterial to the
10 ultimate nondisability determination. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d
11 1050, 1055 (9th Cir. 2006).

12 13 **STATEMENT OF FACTS**

14 The facts have been presented in the administrative transcript, the ALJ’s
15 decision, and the briefs to this Court; only the most relevant facts are summarized
16 here. Plaintiff had a twenty-two year career as a data administrator. Around June
17 2010, Plaintiff’s primary care doctor, Don Andrews, diagnosed Plaintiff with
18 obsessive compulsive disorder, major depression, and panic disorder, and
19 prescribed clonazepam and lorazepam. These medications lessened Plaintiff’s
20 symptoms.

21 In May 2011, Plaintiff was hospitalized for benzodiazepine withdrawal, after
22 presenting at an emergency room with various psychological symptoms. He
23 entered chemical dependency treatment and was discharged by June 2011.
24 Through October 2011, Plaintiff’s psychological, agoraphobic, and anxiety
25 symptoms intensified. Dr. Andrews described Plaintiff’s anxiety as disabling and
26 persistent throughout the day.

1 Margaret Cunningham, Ph.D., evaluated Plaintiff in October 2011. She
2 found that he suffered from many psychological symptoms, and estimated his
3 impairment would last for at least twelve months, but probably longer. She further
4 concluded that Plaintiff was unable to care for himself, avoided his family
5 members, and would be unable to work. Within a few months, Plaintiff began
6 having homicidal thoughts about his girlfriend, and his family took him into their
7 home. In January 2012, he was diagnosed with major depressive order with
8 psychotic features, and anxiety NOS by Crystal Larimer, Pharm. D., at Central
9 Washington Comprehensive Mental Health. She noted several serious symptoms,
10 and assigned Plaintiff a GAF score of 46.

11 Plaintiff's treatment provider at Central, Derrick Conley, M.S.W., concurred
12 in the diagnosis of major depressive order with psychotic features in January 2012.
13 Mr. Conley further noted suicidal ideation and insomnia on the part of Plaintiff.
14 Mr. Conley opined that Plaintiff was unable to work.

15 Plaintiff's symptoms have varied over time. From February 2012 to
16 November 2012, Plaintiff went through bouts of improved mood and crises of
17 anxiety and depression. In November, Mr. Conley concluded that after eleven
18 months, Plaintiff had not reached any of his treatment goals, and recommended
19 another year of group therapy. Later appoints led Mr. Conley to the suspicion that
20 Plaintiff suffered from bi-polar disorder. Plaintiff's general condition continued to
21 fluctuate into October 2013, when Plaintiff was investigated by police after a
22 *Tarasoff*¹ warning that he intended to kill people responsible for the foreclosure of
23 his mother's house. These fluctuations continued further, into March 2015.

24 Mr. Conley completed a mental source statement on Plaintiff's abilities on
25 July 27, 2015. He opined that Plaintiff is unable to maintain concentration for
26

27 ¹ *Tarasoff v. Regents of the Univ. of Cal.*, 17 Cal. 3d 425 (Cal. 1976) (holding that mental health
28 professionals have a duty to protect individuals who are threatened with physical harm by a
patient).

1 extended periods; maintain regular attendance; complete a normal workday and
2 work week; and to perform consistently without unreasonable rest periods. He
3 found marked difficulties in maintaining social function and concentration,
4 persistence, and pace. He further opined Plaintiff would be off-task for around
5 thirty percent of a regular work week and would miss many days of work a month.

6 Plaintiff eventually left his job, and his house was foreclosed upon, based on
7 an inability to summon the wherewithal to sell it. His therapy continues.

8 9 **THE ALJ'S FINDINGS**

10 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
11 activity since the alleged onset date of May 26, 2011.

12 At step two, the ALJ found that Plaintiff suffers from severe impairments
13 including affective disorder/bipolar/depression, and anxiety.

14 At step three, the ALJ found that Plaintiff did not meet or exceed the
15 requirements of a listing.

16 The ALJ concluded that Plaintiff has the residual functional capacity to:

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18 Perform the full range of work at all exertional levels but with the
19 following non-exertional limitations. The claimant is able to
20 remember, understand, and carry out instructions and tasks generally
21 required by occupations with a Specific Vocational Preparation (SVP)
22 Level of 1-2. He is capable of occasional, superficial interaction with
23 the general public and occasional interaction with coworkers or
24 supervisors. He is able to adjust to changes in a work setting generally
25 associated with occupations with an SVP of 1-2.

26
27 ECF No. 17 at 2:6-14.
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At step four, the ALJ found that Plaintiff's limitations prevent him from performing past relevant work. At step five, the ALJ found that Plaintiff could perform other work in the national economy, and concluded he is not disabled for purposes of the Social Security Act.

ISSUES FOR REVIEW

1. Did the ALJ err in concluding that Plaintiff's symptom testimony was less than credible?
2. Did the ALJ err in weighing the medical evidence?

DISCUSSION

1. *Did the ALJ err in concluding that Plaintiff's symptom testimony was less than credible?* Plaintiff contends that the ALJ committed error in concluding that his symptom testimony was less than fully credible. Determinations of credibility and conflicts of evidence are the realm of the ALJ. *Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir. 2007). Regardless, ALJs must offer "specific, clear, and convincing reasons" to reject a Plaintiff's testimony. *Brown-Hunter v. Colvin*, 806 F.3d 487, 488-89 (9th Cir. 2015). In this circumstance, the specific, clear, and convincing reasons must convince the Court that it is "highly probable or reasonably certain" that Plaintiff's testimony is incredible. *Moncada-Vega v. Holder*, 718 F.3d 1083, 1090 n.5 (9th Cir. 2013). Plaintiff contests that each of the ALJ's proffered reasons for rejecting his testimony failed to meet "the most demanding standard" in Social Security law. *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014). The Court evaluates each in turn.

Reason 1: Inconsistency with Daily Functioning and Activities. In his opinion, the ALJ first discredits Plaintiff's testimony as inconsistent with his daily activities. TR 23. The ALJ found that Plaintiff lends significant aid to his mother in

1 taking care of her house less than a year after he left hospitalization and lost his
2 job. Plaintiff also frequently attends church, volunteers, enjoys various hobbies,
3 and partakes in various physical activities. TR 24.

4 Plaintiff argues that the ALJ's determination overly-relies on Plaintiff's
5 2012 function report, and ignores crucial details. Plaintiff points out that by
6 February 2012 he had been attending the clubhouse, a treatment arm of Central
7 Washington, for just two weeks. Plaintiff did admit to cooking for his mother, but
8 could not cook for himself until he had been out of the hospital for eight months.
9 Plaintiff further places these activities within a broader context of a waxing-and-
10 waning cycle of Plaintiff's overall symptoms. Plaintiff states that though there are
11 times where he can engage in those activities, there are other times where his
12 depression keeps him isolated.

13 Defendant argues that when a claimant's testimony regarding limitations is
14 inconsistent with daily activities found in the record, the ALJ may properly
15 discredit Plaintiff's testimony. *See, e.g., Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.
16 2007). This point renders Plaintiff's argument inapposite: the issue here is not that
17 these daily activities are reflective of ability to work per se, they reflect the ALJ's
18 conclusion that Plaintiff's testimony is inconsistent with his symptomology. There
19 is substantial evidence in the record to support the conclusion that these activities
20 were recent and frequent enough to allow the ALJ to discredit Plaintiff's
21 testimony.

22
23 Reason 2: Overall Improvement of Plaintiff's Condition. The ALJ concluded
24 that the overall improvement of Plaintiff's condition caused him to find Plaintiff's
25 symptom testimony less than credible. The Ninth Circuit has recognized that a
26 claimant suffering from mental illness can experience a waxing and waning of
27 symptoms associated with depression, anxiety, and panic attacks. *Holohan v.*
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1 *Massanari*, 264 F.3d 1195, 1205 (9th Cir. 2001). The key is whether the symptoms
2 still seriously “affect [Plaintiff’s] ability to function in a workplace” such that he is
3 disabled. *Id.* Against this, Defendant offers that Plaintiff’s symptoms are not
4 disabling when Plaintiff is compliant with medication and therapy, citing *Warre ex*
5 *rel. E.T. IV v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006)
6 (“Impairments that can be controlled effectively with medication are not disabling
7 for the purpose of determining eligibility for SSI benefits.”).

8 The evidence below indicates that Plaintiff’s condition has substantially
9 improved despite some fluctuation in symptoms. Plaintiff reported consistent
10 progress after beginning treatment in 2012, and describes participating in a
11 growing variety of social activities. His frequency of psychiatric medical
12 appointments decreased, and he reported success on using various drugs and
13 through group therapy.

14 Plaintiff did experience an instance of decompensation and sleep loss when
15 off his treatment. But when taking his medication again, Plaintiff resumed his
16 steady progress. This provides further evidence that treatment has substantially
17 improved Plaintiff’s prognosis. Because there is substantial evidence in the record
18 that Plaintiff’s condition has experienced substantial improvement, the ALJ did not
19 err in discrediting Plaintiff’s testimony.

20
21 Reason 3: Lack of Support from Mental Status Evaluations, Treatment
22 Record, and Failure to Consistently Seek Treatment. Plaintiff contends that the
23 ALJ rejected Plaintiff’s testimony because “it was not supported by his
24 performance on mental status examinations and his treatment record.” ECF No. 17
25 at 12:16-18. Plaintiff further states that “to find the claimant not credible the ALJ
26 must rely on reasons unrelated to the subjective testimony . . . on conflicts between
27
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1 his testimony and his own conduct, or on internal contradictions in that testimony.”
 2 *Id.* at 12:20-25 (citing *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997)).

3 The ALJ recognized this standard, however. As above, the ALJ’s basis for
 4 finding Plaintiff incredible include inconsistencies between Plaintiff’s testimony
 5 and his daily activities and measured in the evidence (a “conflict between his
 6 testimony and his own conduct”). The ALJ properly concluded that symptom
 7 exaggeration is a credibility factor, *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th
 8 Cir. 2001), and that an examining physician’s observation of inconsistency can
 9 militate against credibility, *Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190,
 10 1196 (9th Cir. 2004).

11 Indeed, The ALJ’s conclusions on Plaintiff’s treatment records are supported
 12 by substantial evidence in the record. An inability to follow treatment can discredit
 13 a plaintiff’s complaints on those symptoms. SSR 96-7p. The ALJ summarizes
 14 several instances documenting Plaintiff’s noncompliance, including engaging in
 15 activities that prevent sleep, using mind-altering drugs, and avoiding sessions with
 16 therapists.

17 Given the above findings and legal conclusions, there was substantial
 18 evidence allowing the ALJ to discount Plaintiff’s testimony, and the ALJ gave
 19 clear and convincing reasons for doing so.

20
 21 2. *Did the ALJ err in weighing the medical evidence?* Plaintiff contends the
 22 ALJ mis-weighed the evidence in this case in two ways.

23 A. Bradley Bastian², MSW. Mr. Bastian, Plaintiff’s long-term social worker,
 24 opined that Plaintiff has marked and severe limitations in several domains which
 25 preclude him from work,
 26

27
 28 ² Mr. Bradley Bastian and the undersigned judge are not related.

1 An unacceptable medical source can be used to show a claimant's symptoms
2 and the effect of those symptoms on the ability to work. 20 C.F.R. § 404.1513(d).
3 The weight accorded to these opinions is evaluated by the same SSR 06-03p
4 factors as medical opinions. Nonmedical opinions may be discounted for "germane
5 reasons." *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010).

6 The ALJ provided four reasons for discounting Mr. Bastian's opinion. First,
7 the ALJ determined that Mr. Bastian's estimates were not based on clinical
8 findings, and rather were based on Plaintiff's subjective reports. Second, the ALJ
9 found Mr. Bastian's opinion to be inconsistent with treatment notes and with
10 Plaintiff's stated range of daily activities.

11 The ALJ specifically concluded that "the opinion of marked severity is not
12 consistent with the claimant's treatment/progress notes [written by Mr. Bastian]
13 reflecting substantial improvement in his symptoms and activities," TR 854, and
14 cites discussion of these inconsistencies at TR 852. These inconsistencies are
15 mainly based on Plaintiff's reported improvements in mood, discussed above, and
16 are supported by substantial evidence in the record. This was a proper and germane
17 reason for the ALJ to accord less weight to Mr. Bastian's opinion. *Bayliss v.*
18 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

19 Additionally, these inconsistencies allowed the ALJ to discredit the
20 subjective components of the treatment notes so far as they were inconsistent with
21 Plaintiff's ultimate ability to work. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th
22 Cir. 2008).

23 Any conclusion giving little weight to Mr. Bastian's opinion solely for the
24 reason that he is not an acceptable medical source would be inappropriate. ECF
25 No. 17 at 17:17-22. However, as discussed above, the ALJ offered several germane
26 reasons to grant little weight to the opinion, which are supported by the law and by
27 substantial evidence.

1 B. 2011 and 2012 opinions. Dr. Don Andrews and Dr. Margaret
2 Cunningham completed disability assessments on Plaintiff's short-term disability
3 application. Their reports were completed from Mid-2011 through early 2012, and
4 opined that Plaintiff is unable to work. The ALJ afforded their opinions little
5 weight, finding that they were largely based on self-reporting, subjective factors;
6 were inconsistent with performance at the consultative examination; and that the
7 opinions were vague, conclusory, and did not discuss specific vocational capacities
8 or limitations.

9 These findings satisfy the ALJ's duty to set out a thorough summary of
10 conflicting clinical evidence, interpret it, and make findings. *Reddick v. Chater*,
11 157 F.3d 715, 725 (9th Cir. 1998). Further, the ALJ was required to provide
12 "specific and legitimate reasons" supported with substantial evidence to reject a
13 treating doctor's contradicted opinion. *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d
14 1194, 1198 (9th Cir. 2008). The Court concludes that the ALJ did so.

15 As discussed above, an ALJ may afford less weight to a medical opinion
16 when it is based on self-reports found less credible. *Tommasetti*, 533 F.3d 1041.
17 The ALJ did so here. The ALJ also considered these doctors' opinions on whether
18 the Plaintiff could work, despite the lack of discussion of particular vocational
19 limitations, and rejected those conclusions based on an independent review of the
20 clinic evidence. This rejection was also based partly on the consultative
21 examination which did discuss particular vocational abilities and skills. TR 854.

22 Additionally, Plaintiff has, since the time of those reports, started taking
23 medication and presented a longitudinal improvement in mood and symptomology.
24

25 CONCLUSION

26 The Court concludes that the ALJ properly evaluated claimant's testimony
27 and properly weighed the medical opinions. There is "more than a mere scintilla"
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1 of evidence for the ALJ's conclusions, *Perales*, 402 U.S. 401, such that a
2 "reasonable mind might accept as adequate to support" them. *Richardson*, 402 U.S.
3 at 401. Because one rational interpretation of the evidence supports the decision of
4 the administrative law judge, the decision must be upheld. *Batson*, 359 F.3d at
5 1193. Substantial evidence based on the record supports the opinion of the ALJ,
6 and the Court **affirms** the opinion.

7
8 Accordingly, **IT IS HEREBY ORDERED:**

- 9 1. Defendant's Motion for Summary Judgment, ECF No. 21, is
10 **GRANTED**.
11 2. Plaintiff's Motion for Summary Judgment, ECF No. 17, is **DENIED**.
12 3. The decision of the Commissioner denying benefits is **AFFIRMED**.
13 4. The District Court Executive is directed to **ENTER** a judgment in favor
14 of Defendant.

15 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
16 file this Order, provide copies to counsel, and **CLOSE** the file.

17 **DATED** this 24th day of March, 2017.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

24 Stanley A. Bastian
25 United States District Judge
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27
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